



General Assembly

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Human Rights Council

Twenty-ninth session

Agenda item 4

Human rights situations that require the Council's attention

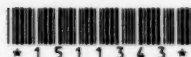
Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[02 June 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-11343 (E)



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Thailand: Post-coup violations concerns abide, one year on and a “temporary situation” is becoming permanent

Further to its statements to the UN Human Rights Council in June 2014¹ and March 2015,² Amnesty International remains concerned that authorities in Thailand continue to violate many of the country’s international human rights obligations following the imposition of martial law on 20 May 2014 and the coup on 22 May 2014.³

While authorities lifted martial law provisions on 1 April 2015, there is no indication when they will lift repressive restrictions on the right to liberty and the peaceful exercise of other human rights, in particular those relevant to peaceful involvement in political activities.

Authorities have retained sweeping powers, identical to, if not more draconian than those they had under martial law, using Article 44 of the Interim Constitution to deny or excessively restrict human rights in the name of security, without administrative review. These includes powers granted by authorities in April 2015 to appoint army officers (“peace and order maintenance officers”) to arbitrarily detain persons, carry out inquiries and searches without a warrant. The provisions granting these powers must be repealed.

Thai authorities continue to arbitrarily detain and imprison individuals, prevent or censor meetings and public events, and otherwise suppress peaceful dissent. The Public Assembly Act, which was passed on 1 May 2015, adversely affects the human right to freedom of peaceful assembly as well as to freedoms of expression and association, by requiring advance notification, and in effect official permission for public assemblies, and by providing for criminal penalties for failing to meet this and other conditions. Thailand’s derogation from obligations under the International Covenant on Civil and Political Rights with regard to the rights to appeal, freedom of expression and peaceful assembly, enacted on 8 July 2014 and notified to the United Nations, remains in place.⁴

Fair trial rights are being violated by the use of military courts to try civilians. Moreover, individuals continue to be tried in military courts for acts that have been criminalised in violation of Thailand’s human rights obligations, including participation in peaceful gatherings and carrying out other peaceful acts of expression. Scores have already been prosecuted. Arrests, detentions, prosecutions and imprisonment for up to 50 years under Thailand’s repressive *lèse majesté* law have dramatically increased since the coup, with significantly increased application of lengthier sentences. While authorities have restored the right of appeal for civilian defendants in military courts, appeals would be to a higher military court rather than to a civilian one. Moreover, the right is still denied to individuals alleged to have committed offences before 1 April 2015.

Authorities have denied the National Human Rights Commission and forensic experts access to individuals who reported being tortured or otherwise ill-treated during incommunicado detention without charge or trial. The liberty of hundreds of politicians, academics, activists and journalists previously arbitrarily detained following the coup continues to be subjected to conditions imposed on them upon release, including restrictions on their rights to freedom of peaceful assembly, expression and movement. They will face prosecution should they breach the conditions. Broad restrictions on freedom of expression and peaceful assembly remain in place, including a blanket ban on political activities.

¹ *Thailand: Respect and protect the human rights of people in Thailand.*

<http://www.amnesty.org/en/library/info/ASA39/010/2014/en> [last accessed on 28 May 2015]

² *Thailand: Post-coup violations continue: is a “temporary situation” becoming chronic?*

<https://www.amnesty.org/en/documents/asa39/1042/2015/en/> [last accessed on 28 May 2015]

³ See, for example, *Thailand: Arrests on coup anniversary are a stark reminder of ongoing repression*

<https://www.amnesty.org/en/articles/news/2015/05/thailand-arrests-on-coup-anniversary-stark-reminder-of-repression/> [last accessed on 28 May 2015]

⁴ <https://treaties.un.org/doc/Publication/CN/2014/CN.479.2014-Eng.pdf> [last accessed on 28 May 2015]

Concerns remain for the safety of human rights defenders in rural communities. Following the lethal attack on 12 February 2015 on Chai Bunthonglek, a member of the Southern Peasants' Federation of Thailand and campaigner for the land rights of the Khlong Sai Pattana Community in Surat Thani Province, death threats have been reported against members of the Khlong Sai Pattana Community and Phianrat Bunrit, President of the Southern Peasants' Federation of Thailand.

A longstanding human rights concern that persists, and has even worsened of late, is that Thailand has failed to provide asylum seekers with adequate protection as well as full and fair access to international refugee screening procedures. This is evident specifically for significant numbers of Rohingya fleeing violence, discrimination and persecution in Myanmar. Although Thailand has not ratified the 1951 Refugee Convention, it must abide by principles of customary international law. This includes the principle of non-refoulement, which prohibits the transfer of anyone to a place where his or her life or freedom would be at risk, as well as the ban on torture and other cruel, degrading and inhuman treatment. Other relevant binding principles of international law include provisions set out in the 1982 UN Convention on the Laws of the Sea (to which Thailand is a state party), such as the duty to establish search and rescue operations to locate and help boats requiring assistance including those carrying asylum seekers.

Recommendations

Amnesty International continues to urge members and observer states of the UN Human Rights Council to call on authorities in Thailand to:

- Transfer all judicial jurisdiction over civilians from military to civilian courts;
- End arbitrary detentions and restrict the army's powers to detain civilians;
- Independently and effectively investigate all reports of torture and other acts of ill-treatment, and bring suspected perpetrators, including those with command responsibility, to justice in fair proceedings in civilian courts without recourse to the death penalty;
- Lift the sweeping restrictions on freedom of expression and peaceful assembly and withdraw all draft legislation imposing further restrictions;
- Overturn convictions and sentences, withdraw charges and release individuals who have been sentenced or charged for peacefully exercising their rights to freedom of expression or assembly;
- Repeal or amend the lèse majesté law to ensure that it does not penalize the peaceful exercise of the right to freedom of expression, and suspend the application of this law pending such repeal or amendments;
- Respect and protect the right to life, including of human rights defenders, and ensure that all violations of the rights of human rights defenders are promptly, effectively and independently investigated;
- Provide asylum-seekers with meaningful access to asylum procedures and to the UN High Commissioner for Refugees (UNHCR) and ensure that individuals who are fleeing persecution are afforded international protection;
- End all detention of asylum seekers and migrants solely for their status or for the means by which they entered the country;
- Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol; and
- Restore full constitutional protection of human rights.



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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

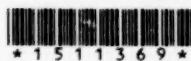
Written statement* submitted by the Europe-Third World Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-11369 (E)



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Chevron's activities impair freedom of expression of victims, academics, students and activists

BACKGROUND¹

On 5 February 1964 the military junta governing Ecuador granted a more than 1.4 million-hectare concession to the Texaco Gulf Consortium for oil prospecting and extraction in Sucumbios and Orellana provinces in the Ecuadorian Amazon. In 1973 the concession was redefined and located in a 400,000-hectare area, where the North American transnational Texaco, now known as Chevron,² extracted oil until 1992. At the time the area was inhabited by several indigenous peoples,³ which were affected by the company's activities: so much so that the Cofán people lost 74% of their members⁴ from forced displacement and the Tetete people were entirely exterminated.

In 1993 the communities filed a claim in the United States against the oil company Texaco, for environmental pollution and damage to the health of their members.⁵ Soon after, at the request of the company itself, the case was referred to a court in Ecuador,⁶ which sentenced Chevron (formerly Texaco) to compensate the inhabitants and to take all necessary measures to restore the affected ecosystem.⁷

The Ecuadorian courts found it proven that the company had drilled more than 350 wells and dug around 1,000 pits that it used to store toxic materials used during drilling, production waters and other industrial waste, which was not properly treated and thus ended up in the rivers and lakes of the region.

For its part, Chevron denied liability and has devoted enormous efforts and resources to getting the judgement set aside and persecuting the victims.

INTIMIDATION BY CHEVRON

Chevron started a campaign of deterrence and intimidation against the communities, its lawyers and its support organizations. Its intention was clearly shown on various occasions, for example:

3 May 2009: Chevron's chief lawyer promised that the company would "fight until hell freezes over and then fight it out on the ice".⁸

20 July 2009: a company spokesman told the *Wall Street Journal*, with regard to the trial, "We are not paying and we are going to fight this for years if not decades into the future".⁹

4 August 2008: in *Newsweek* magazine a lobbyist from Chevron, when asked about the legal action filed by the Amazonian communities, said, "we cannot allow little countries to mess with big companies like this one".¹⁰

Chevron has published press releases promising the Ecuadorians a lifetime of litigation if they persisted in the claim.¹¹ The threats did not stop at words. Some years ago Chevron stepped up its action to avoid paying the penalty, hiring around 60 companies and 2,000 lawyers, public relations agencies and lobbyists to work out a strategy using mainly intimidation and scare tactics to silence anyone who tries to speak up in support of the affected communities.

Millions of dollars have been invested to attack activists, journalists, cartoonists, documentary makers, scientists and lawyers, all of whom have been persecuted and accused by Chevron. Seemingly nobody can speak out against the company without suffering some kind of harassment.

Several human rights NGOs have condemned this sort of action,¹² but Chevron's persecution does not stop.

Below we describe some of the actions Chevron has taken to silence the affected people and their allies.

Legal proceedings to scare into silence

Chevron launched lawsuits based on illegal practices such as the “fishing expedition”.¹³ To do this it went to United States courts and asked for information beyond the fair scope of its lawsuit, thereby abusing the law of the land and, in particular, the discovery procedure, in order to obtain personal letters, documents and general information about particular individuals.¹⁴ Chevron filed 25 lawsuits of this kind against lawyers, activists, journalists, documentary makers and NGO assistance, in more than 17 US jurisdictions. They were subpoenaed to provide non-specific information and were subjected to complex questioning during which they were threatened with prison.

Chevron asked Google, Yahoo and Microsoft to provide information on users of over 100 electronic mail accounts, and about where the accounts had been accessed in the past 10 years. It was not successful, but it managed to intimidate many people.

As a result of this hunting spree, Chevron got proceedings opened against the communities associates, used judicial proceedings as a means of intimidating and also as a means of obtaining confidential documents which it handed over illegally to its lawyers.

The organizations which have supported the plaintiffs in the lawsuit have used enormous resources in responding to Chevron's attacks. They have had to hand over information on their operations and private information about people working with them has been exposed.

Press freedom and judicial proceedings against journalists and documentary makers

In 2008 Joe Berlinger¹⁵ brought out his documentary “Crude”, on the legal action taken by the community against Chevron, and it was screened at a dozen international festivals.¹⁶

In 2010 Chevron asked a court in New York to order J. Berlinger to hand over all the outtakes from the film. The trial judge, Lewis Kaplan, accepted Chevron's request and ordered Berlinger to turn over some 600 hours of outtakes to Chevron. Berlinger appealed the order in the Second Circuit Court of Appeals. Leading American media, including the *New York Times*, ABC, NBC, CBS and Associated Press, filed an *amicus curiae* brief with the Court opposing discovery of the material. The Court of Appeal ignored this request, however, and upheld the decision of the lower court, although it reduced the number of outtakes to be handed over. Berlinger was obliged by an unprecedented court order to hand over 500 hours of recording, which was an infringement of press freedom.

CBS's “60 Minutes” also visited the area and made a report on the case,¹⁷ which won the Edward R. Murrow Award.¹⁸ In response Chevron hired a former CNN reporter to do a piece putting the company's arguments and three weeks before the “60 Minutes” report aired, the Chevron piece was broadcast as an independent report. When the “60 Minutes” report was shown, Chevron complained to the *Columbia Journalism Review*, which severely criticized CBS on the basis of the false arguments of Chevron.¹⁹

A similar thing happened to William Langewiesche,²⁰ a *Vanity Fair* journalist who in 2007 wrote an article on the case. Years afterwards Chevron got hold of several emails between Steven Donziger²¹ and William Langewiesche, took them out of context and launched a publicity campaign to discredit the journalist.

Chevron has also hired journalists to spy on the plaintiffs, as evidenced by the testimony of Mary Cudehe,²² who was contacted by Kroll²³ in Bogotá and asked to infiltrate the plaintiffs and make a supposedly independent report. When she reported this she too was attacked by Chevron.

Investors persecuted

Thomas DiNapoli,²⁴ director of the New York State pension fund, has also been the victim of retaliation by Chevron, because the fund owns stock in Chevron and in that capacity asked Chevron to handle the trial in Ecuador better. In 2012 Chevron filed a complaint against DiNapoli to the New York State Joint Commission on Public Ethics.²⁵

Amnesty International USA has held some Chevron stock for decades. In 2012 Simon Billenness, an Amnesty International activist, was subpoenaed to hand over all documents and emails relating to his work with Chevron shareholders. He was required to hand over not only communications with shareholders but also those with government agencies and, in addition, documents and emails related to his work with Amnesty International.

Extortion (RICO) trial

On 1 February 2011 Chevron filed a lawsuit in the Southern District of New York accusing the plaintiffs and their partners of extortion.²⁶ There were serious irregularities in the trial, such as the partiality of the judge, a ban on referencing any evidence related to pollution by the oil company, admission of paid witnesses and denial of a jury trial.

The judgement rendered found that the NGO media campaigns, webpages and blogs, and requests to government officials, could amount to extortion by those organizations. An appeal was filed against this sentence on 2 July 2014 at the United States Court of Appeal for the Second Circuit.²⁷

Several United States NGOs have warned of the threat to their work posed by the court's decision in this case. A group of organisations has even filed an *amicus curiae* brief to the court that is to hear the appeal.²⁸

Intimidation, persecution and gagging of environmental consultants

Stratus Consulting Inc.²⁹ was one of the entities sued in the RICO case brought by Chevron. Stratus scientists had given their scientific opinion on the serious contamination left behind by Chevron in several forums, including the "60 Minutes" programme. Stratus's support for and statements on behalf of the plaintiffs prompted Chevron to launch an aggressive campaign against it, investing large sums in action designed to persecute and discredit Stratus.³⁰ It also lobbied to prevent Stratus being awarded government contracts, even making and airing videos accusing the company of "criminal conspiracy".

After a four-year legal battle, Stratus went bankrupt and was forced to come to a retraction agreement with Chevron.³¹

CONCLUSION

The 22-year litigation between the Amazonian peoples and Chevron is a benchmark case in the struggle to ensure that transnational corporations are held accountable for the human rights violations they commit. It deserves the full support of all States, so as to guarantee the victims access to justice and to reparation for the harm caused.

Enforcement of the Ecuadorian court ruling against Chevron would be a major victory for human rights, the communities affected, the independence of the justice system and the sovereignty of States. The size, power or wealth of the company should not be an impediment to enforcement.

The fact that the plaintiffs' action against Chevron's operations in Ecuador is deemed criminal is the direct infringement not only of the right to freedom of expression and association but also of the rights to justice and reparation.

The CETIM urges the Human Rights Council and the United Nations High Commissioner for Human Rights to take urgent action and intervene with the United States to put a stop to the attacks by Chevron that violate the basic rights of the Amazonian peoples and their defenders.

1 This declaration has been drafted in collaboration with Unión de Afectados por las Operaciones de la Petrolera Texaco (Chevron) en Ecuador (UDAPT).

2 Chevron joined Texaco in 2001, as a result of this, it inherited its goods, its debts and was responsible of all pending lawsuits.

3 They are the Secoya, Sionas, Waorani, Shuar, Kichwa, Cofán and Tetete indigenous peoples.

- 4 It went from 5,000 inhabitants to under 800, according to Miguel Ángel Cabo de Villa's texts.
- 5 For more details on the damages caused by Texaco in Ecuador, see the written statement presented by the CETIM to the Human Rights Council in June 2014, A/HRC/26/NGO/74, available here: http://www.cetim.ch/en/interventions_details.php?id=382 "In 26 years of oil drilling in the Amazon region of Ecuador, Texaco has polluted more than 450,000 hectares of one of the planet's richest biodiversity regions, destroying the living and subsistence of its inhabitants, causing the death of hundreds of persons and a brutal increase in the rate of cancer and other serious health problems. More than 60 billion liters of toxic waste water were dumped into the rivers and streams, 880 hydrocarbon waste pits were dug, and 6.65 billion cubic meters of natural gas were burned in the open air."
- 6 On 3 November 1993 just under 30,000 Ecuadorian people, indigenous and colonists, affected by the pollution left over by Texaco in their territories, filed a lawsuit in New York. On the 15th August 2002, the Appeal Court of New York South District order the case to be transferred to the Ecuadorian jurisdiction to which Chevron accepted to submit to. On the 7th May 2003, those affected by Texaco's activities initiated legal action against the oil company in Sucumbios province, in Ecuador.
- 7 On the 13th November 2013, the National Court of Justice of Ecuador ratified the sentence imposed by the Sole Chamber of the Province Court of Justice of Sucumbios dated 3rd of January 2012, which ratified at its turn the first instance sentence by the President of the Province Court of Sucumbios dated 14th February 2011, by which it was ordered to pay for damages the amount of 9.5 billion dollars. The decision is enforceable.
- 8 John Otis, "Chevron vs. Ecuadorean Activists", *The Global Post*, May 3rd, 2009, available at: <http://www.globalpost.com/dispatch/the-americas/090429/chevron-ecuador?page=0,2#>
- 9 Ben Casselman, "Chevron Expects to Fight Ecuador Lawsuit in U.S.", *Wall St. Journal*, July 20th, 2009, available at: <http://online.wsj.com/article/SB124804873580263085.html>
- 10 "A \$16,000 million problem", by Michael Isikoff in *Newsweek* (August 4th, 2008).
- 11 See Press Release: "Chevron Calls for Dismissal of Ecuador Lawsuit", Oct. 8th, 2007, available at: http://www.chevron.com/chevron/pressreleases/article/10082007_chevroncallsfordismissalofecuadorlawsuit.news.
- 12 In an open letter dated 23 January 2014 signed by dozens of organizations, they alert on several risks and "condemn Chevron's actions in its effort to silence criticisms against it and ignore a \$9.5 billion judgement for environmental damages in Ecuadorian Amazonia. Chevron's actions constitute a dangerous precedent and are a serious and increasing threat to civil society's capacity to keep corporations liable for their misdemeanours around the world". See <http://amazonwatch.org/assets/files/2014-chevrons-threat-to-open-society.pdf>
- 13 Using the courts to find out information beyond the fair scope of the lawsuit. Randomly looking for evidence against plaintiffs, lawyers and associates.
- 14 Lawyers, activists, journalists, documentary makers and assistants of civil society organizations linked with the case, among others.
- 15 American documentary director and producer, winner of two Emmy awards, among others. For further information see: <http://www.crudethemovie.com/filmmakers/>
- 16 Among others, the Sundance Film Festival, the Sydney Film Festival, San Francisco International Film Festival, SILVERDOCS Independent Film Festival of Boston, One World Film Festival.
- 17 See <http://www.cbsnews.com/news/amazon-crude-update/>
- 18 See <http://www.cbsnews.com/news/60-minutes-wins-two-edward-r-murrow-awards/>
- 19 http://www.cjr.org/the_audit/how_60_minutes_missed_on_chevr.php

- 20 William Langewiesche has had a long career in journalism and won several awards for his work. See <http://www.vanityfair.com/contributor/william-langewiesche>
- 21 Community lawyer, United States
- 22 See <http://www.theatlantic.com/international/archive/2010/08/a-spy-in-the-jungle/60770/>
- 23 Company that presents itself as a global leader in corporate risk mitigation and response. See <http://kroll.com/>
- 24 New York State Controller, who manages the State employees' pension fund.
- 25 See <http://www.theamazonpost.com/wp-content/uploads/Ethical%20Complaint%20against%20DiNapoli%20to%20Joint%20Commission.pdf>
- 26 This claim was made under the Racketeer Influenced and Corrupt Organizations (RICO) Act, a statute originally enacted to allow US government agencies to combat organized crime. See http://en.wikipedia.org/wiki/Racketeer_Influenced_and_Corrupt_Organizations_Act
- 27 See http://www.csrwire.com/press_releases/37240-Donziger-Appeal-Judge-Kaplan-Allowed-Corrupt-Witness-Testimony-Violated-International-Law-and-Stretched-RICO-Past-Breaking-Point-
- 28 In the document submitted to the court the organizations state: "In essence, this case is an effort by Chevron to retaliate against Ecuadorian villagers, their lawyers, and their supporters for suing, bringing public pressure, and petitioning government agencies to hold Chevron accountable for violations of human rights. The district court's decision below, if allowed to stand, poses a severe threat to the rights to expression, association, political participation, and access to courts guaranteed by the First Amendment. If the vaguely defined scope and heavy penalties of RICO – enacted to support law enforcement efforts against organized crime syndicates – may be wielded by private parties against public interest groups and activists who engage in First Amendment-protected activities to seek to hold those private parties accountable, democracy itself is threatened." *Amicus Curiae* on Behalf of Amazon Watch, Amnesty International, et al. *Chevron Corporation v. Hugo Camacho et al.* Case 14-826. New York Court of Appeal. See http://d2zyt4oqqla0dw.cloudfront.net/sites/default/files/donziger-amicus_2014awbrief.pdf
- 29 Group of scientists operating in Colorado, USA, who for many years have conducted environmental studies. Stratus was hired by the plaintiffs in this case to assess the contamination left behind by Chevron.
- 30 Extract from document submitted to the Court by Stratus: "[Chevron has] embarked on an extrajudicial campaign of malicious defamation and deliberate interference with Stratus' business to tortiously destroy Stratus (and the livelihood of its employees) and to prevent Stratus from being able to successfully defend itself at trial. Chevron's scheme ... consists ... of widely and publicly disseminating lurid allegations against Stratus concocted from lies and inappropriate manipulation ... (of) evidence, publishing defamatory written statements directly to Stratus' clients and others, falsely and maliciously telling clients that (courts) have entered conclusive findings confirming Chevron's allegations ...; in direct and indirect communications explicitly and repeatedly requesting that Stratus' clients fire Stratus or not engage Stratus as a technical consultant...." Memorandum of Law on behalf of defendant Stratus Consulting, Inc., in support of its motion to amend its answer to assert counterclaims. Case No. : 11 CV 0691 (LAK). December 21, 2012. See <http://chevrontoxico.com/assets/docs/2012-12-21-stratus-counterclaims.pdf>
- 31 See <http://thechevronpit.blogspot.com/2013/04/the-truth-behind-stratus-affidavits.html>



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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

**Joint written statement* submitted by France Libertés :
Fondation Danielle Mitterrand, American Association of
Jurists, Cultural Survival, Emmaus International
Association, Netherlands Centre for Indigenous Peoples
(NCIV), Stichting Forest Peoples Programme, non-
governmental organizations in special consultative status,
Indian Council of South America (CISA), Mouvement contre
le racisme et pour l'amitié entre les peuples, non-
governmental organizations on the roster**

The Secretary-General has received the following written statement which is circulated in
accordance with Economic and Social Council resolution 1996/31.

[22 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-08911 (E)



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Please recycle



Hydroelectric dams and violations of indigenous peoples' right to free, prior and informed consent in the Brazilian Amazon*

In its rush to build an unprecedented number of hydroelectric dams on major Amazon rivers, the Brazilian government has repeatedly violated international human rights agreements to which the country is party, such as ILO Convention 169 and the UN Declaration on Rights of Indigenous Peoples (UNDRIP) concerning the right of indigenous and tribal peoples to previous consultation and Free, Prior and Informed Consent (FPIC). As such violations intensified, the devastating human and environmental consequences of these dam projects have become increasingly visible. This statement provides a brief update on violations of indigenous peoples' right to previous consultation and FPIC regarding dam projects in the Brazilian Amazon, highlighting the Belo Monte dam complex on the Xingu River and a series of large dams, planned and under construction, in the Tapajós basin.¹

In Brazil, systematic violations of indigenous peoples' rights to FPIC in the planning, licensing and construction of Amazonian dams are largely the result of: 1) the lack of a consistent position of the Brazilian government regarding how the rights of indigenous peoples to consultation and FPIC, as determined by ILO Convention 169 (ratified in 2002), UNDRIP, the Inter-American System on Human Rights, and the Brazilian Constitution must be applied to hydroelectric dams and similar projects that directly impact indigenous territories and livelihoods;² and 2) the willingness of the Brazilian government to undermine the rule of law and democratic institutions, catering to powerful interests of a longstanding alliance between the Ministry of Mines and Energy (MME), political parties and private construction companies. As demonstrated in recent investigations by the Federal Police and Public Prosecutors, this alliance is closely linked to massive corruption schemes.³

The planning and licensing of hydroelectric dams in the Brazilian Amazon has been characterized by: a) the use of basin inventory studies conducted by MME and private companies that focus narrowly on identification of sites with maximum potential for energy generation - regardless of social and environmental consequences of individual projects and dam cascades - as a basis for political decisions on dam construction, with no FPIC process; b) incomplete environmental impact and economic viability studies carried out by dam proponents without independent and objective analysis, and thus, results, c) denial of the existence of downstream and other impacts, largely as a means to justify the absence of FPIC; d) political strong-arming of institutions responsible for environmental protection to approve environmental licenses, and e) lack of independent monitoring of dam impacts and implementation of required mitigation and compensation measures.

A striking example of disregard for indigenous rights in the planning, licensing and construction of dam projects is the repeated use of a legal tool known as "Security Suspension" (*Suspensão de Segurança*) that allows chief justices, upon request from the federal government, to unilaterally suspend legal decisions in favor of indigenous peoples' rights, based on vaguely-alleged threats to national security and the country's "social and economic order". According to current legislation, a "Security Suspension" remains in effect until the last possible phase of appeals, allowing dam construction to become a *fait accompli*, while gross violations of human rights continue. As denounced by civil society

¹ See joint statement A/HRC/25/NGO/43 (14 February 2014):

http://ap.ohchr.org/documents/alldocs.aspx?doc_id=22780

² See: Memorando no. 244/2013/FUNAI-MJ, from ex-President Maria Augusta Assirati of the Federal Indian Agency (FUNAI) to Minister of Justice José Eduardo Cardozo, which never received a response. Within this context of ambiguity, a particular problem has been the Rousseff administration's refusal to acknowledge situations in which the *consent* of indigenous peoples should be a prerequisite for project approval.

³ See: <http://www.bloomberg.com/news/features/2015-05-08/brazil-s-massive-corruption-scandal-has-bitterness-replacing-hope>
<http://g1.globo.com/bom-dia-brasil/noticia/2014/12/costa-diz-que-esquema-de-propina-e-superfaturamento-funciona-sempre.html> See also: <http://www.internationalrivers.org/resources/8595>

organizations and legal experts in Brazil, the *Suspensão de Segurança* constitutes an obstacle to Brazil's compliance with international human rights agreements, such as ILO Convention 169 and UNDRIP.⁴

Belo Monte

The Belo Monte Hydroelectric Complex, under construction since mid-2011 on the Xingu River, one of the Amazon's major tributaries, is arguably the world's most notorious example of a mega-dam project that involves blatant disregard for both national and international human rights and environment law. Since 2001, Belo Monte has been the object of at least twenty Civil Action Lawsuits filed by the Federal Public Prosecutors' Office (MPF).

In 2006, MPF filed a lawsuit questioning approval by Brazil's National Congress of Legislative Decree no. 788/2005 that authorized construction of Belo Monte despite a lack of prior consultations with affected indigenous peoples, as mandated by article 231 of the Federal Constitution and ILO Convention 169. In August 2012, a federal appeals court (TRF-1) ruled on the merits of the case, suspending Decree 788 and the construction of Belo Monte. In a matter of days, outgoing Chief Justice of the Supreme Court (STF), Carlos Ayres Britto, upon request from the Attorney General's Office (AGU), unilaterally suspended the court decision, via *Suspensão de Segurança*, ignoring arguments concerning the case's merits and postponing a final judgment. Subsequently, STF has neglected to consider appeals from the Federal Public Prosecutor's office to reconsider Britto's decision.⁵

In November 2010, a coalition of Brazilian and international organizations filed a petition with the IACHR on behalf of affected indigenous communities from the Xingu, calling attention to the absence of FPIC among indigenous peoples threatened by Belo Monte, and threats to groups in voluntary isolation. In April 2011, the Commission issued precautionary measures (PM 382-2010), requesting the Brazilian government, among others, to suspend licensing and construction of Belo Monte prior to conducting a process of FPIC among local indigenous peoples, while taking special actions to ensure the physical integrity of tribes in voluntary isolation. The response of the Brazilian government was an aggressive denial of any violations of indigenous rights and a refusal to implement the precautionary measures. While questioning the authority of the IACHR, the Brazilian government withheld its financial contributions to the OAS, and candidates to the Inter-American Commission in retaliation.⁶ The IACHR subsequently issued an amended version of the precautionary measures in July 2011 (still in place).⁷

Tapajós

The Tapajós basin is currently the main focus of the Brazilian government's ambitious dam-building plans for the Amazon, which is on a collision course with indigenous territories and other protected areas. In the case of the São Luiz do Tapajós dam, the largest of the planned hydro-projects in the basin, the Federal Public Prosecutors Office in the state of Pará (MPF-PA) filed a Civil Action Lawsuit in September 2012, demanding a process of FPIC with threatened indigenous peoples, prior to granting a first phase environmental license for the project. The lawsuit also demanded an evaluation of cumulative impacts of the São Luiz do Tapajós dam, together with other projects slated for construction in dam cascades on the Tapajós and a major tributary, the Jamanxim. Following a favorable decision from a federal judge in November 2012, the Secretary General of the Presidential office announced that it would coordinate consultations with the Mundurucu people, directly threatened by São Luiz do Tapajós and other planned dam projects on the Tapajós

⁴ See: http://www.icjp.pt/sites/default/files/papers/o_terror_juridico_completo.pdf

⁵ At least six other lawsuits on Belo Monte have been similarly undermined via "Security Suspension": http://www.prpa.mpf.mp.br/news/2014/arquivos/Tabela_de_acompanhamento_atualizada_Mar_2014.pdf#at_download/file

⁶ <http://economia.estadao.com.br/noticias/geral,brasil-nao-paga-oea-por-cao-de-belo-monte-imp-,787892>

⁷ <http://www.oas.org/en/iachr/decisions/precautionary.asp>

main stem. Paradoxically, the Secretary General, Minister Gilberto Carvalho, simultaneously declared that the process of consultation with the Munduruku would not deter the government's plans for constructing São Luiz do Tapajós and other dam projects.⁸

Meanwhile, as foreseen in relevant legislation, the Munduruku people prepared a "protocol" on procedures for ensuring a culturally-appropriate process of FPIC.⁹ In January 2015, the protocol was personally delivered to incoming Secretary General of the President's office, Miguel Rossetto, but has yet to receive a formal response from the government.¹⁰ In April 2015, incoming Minister of Mines and Energy, Eduardo Braga, declared that the auction for São Luiz do Tapajós will take place in November 2015, while ignoring pending needs for FPIC.¹¹

On the Teles Pires River, a major tributary of the Tapajós, the construction of a cascade of four large dams, with no process of FPIC, has already provoked major social and environmental consequences. In April 2015, an alliance of four indigenous tribes denounced the Brazilian government for initiating a process of cultural and physical genocide.¹²

We urge the Brazilian government to:

- Observe international commitments to human rights and implement a culturally appropriate process of prior consultations and FPIC;
- Respect the independence of the Judiciary and eliminate the use of the "Security Suspension" to undermine legal decisions in favor of indigenous rights to FPIC.

We call upon the Human Rights Council to request information to the State and closely monitor violations of indigenous rights associated with hydroelectric dams in the Brazilian Amazon, through the applicable mechanisms, including field visits to meet with affected communities and the Federal Public Prosecutors, involving the following relevant special procedures:

- Special Rapporteur on rights of indigenous peoples
- Special Rapporteur on human right to safe drinking water and sanitation
- Special Rapporteur on independence of judges and lawyers
- Working group on business and human rights

⁸ See: <http://racismoambiental.net.br/2014/11/12/ele-e-um-canalha-lideranca-munduruku-responde-entrevista-de-gilberto-carvalho/>

⁹ <http://amazonwatch.org/assets/files/2014-12-14-munduruku-consultation-protocol.pdf>

¹⁰ <http://www.prpa.mp.br/news/2015/indios-e-ribeirinhos-entregam-ao-governo-federal-protocolo-para-consulta-previa-da-usina-sao-luiz-do-tapajos>

¹¹ <http://www.xinguvivo.org.br/2015/04/17/munduruku-desmentem-eduardo-braga-sobre-dialogo-com-indigenas-e-exigem-consulta-e-demarcacao/>

¹² http://www.internationalrivers.org/files/attached-files/manifesto_da_alianca_dos_povos_indigenas-protocolos-assinaturas.pdf
http://www.internationalrivers.org/files/attached-files/manifesto_indigenous_alliance_teles_pires_24abril2015.pdf

***BRAZIL/LATIN AMERICA:** Articulação dos Povos Indígenas do Brasil - APIB Articulação Antinuclear Brasileira Articulação de Mulheres Brasileiras - AMB Asociación Ambiente y Sociedad - Colombia Associação Movimento Paulo Jackson - Ética, Justiça, Cidadania Coletivo de Mulheres - Altamira Comissão Justiça e Paz da Diocese de Santarém Conselho Indigenista Missionário - CIMI Fórum de Mudanças Climáticas e Justiça Social - FMCJS Fórum de Mulheres da Amazônia Paraense - FMAP Fórum em Defesa de Altamira Fundação Tocaia Fundación M'Biguá, Ciudadanía y Justicia Ambiental, Paraná, Entre Ríos, Argentina. Greenpeace Brasil Grupo Sementes Instituto Amazônia Solidária - IAMAS Instituto Madeira Vivo - IMV Instituto Transformance: Cultura e Educação (Pará) Movimento Articulado de Mulheres da Amazônia - MAMA Movimento Negro Movimento Tapajós Vivo Movimento Xingu Vivo Para Sempre Mutirão Pela Cidadania Rede Brasileira de Arteducadores - ABRA Rede de Cooperação Amazônica - RCA Sociedade Paraense de Defesa dos Direitos Humanos - SDDH Terra de Direitos INTERNATIONAL: Amazon Dams Network, Tropical Conservation and Development Program, UF Gainesville Amazon Watch, USA Associação para os Povos Ameaçados Suíça CounterCurrent, Germany CSF - Conservation Strategy Fund DKA - Hilfswerk der Katholischen Jungschar, Austria ECA Watch, Austria FDCL - Forschungs- und Dokumentationszentrum Chile-Lateinamerika, Germany GITPA, France Infoe (Institut für Ökologie und Aktionsethnologie e.V.), Germany Interamerican Association for Environmental Defense - AIDA International Rivers, USA Kooperation Brasilien e.V., Germany Planète Amazone, France Pro REGENWALD, Germany Rainforest Foundation USA River Watch, Austria Saka Mese Nusa AlifURU Foundation, Holland Society for Threatened Peoples, Switzerland Welthaus, Austria NGOs without consultative status, also share the views expressed in this statement.



General Assembly

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Human Rights Council

Twenty-ninth session

Agenda item 7

**Human rights situation in Palestine and other
occupied Arab territories**

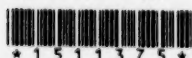
Written statement^{*} submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 May 2015]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-11375 (E)



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No Trial, No Advocate, No Verdict

It is often said that actions speak louder than words. Israel's boycott of Agenda item-7 of the UN Human Rights Council (HRC) in itself speaks loud and clear to the international community. It might say, among other things, that Israel considers itself above and beyond the norms, standards, and international laws that govern the large landscape of universal human rights. In reaction, the leaders of human rights and democracy are not only dead silent, but also tragically complacent. If the USA, European Union Member States (EU), and other countries cannot challenge Israel's arrogant defiance, why have they joined its non-cooperation with the Council, when even bats and owls should begin to see clearly how the Occupying Power has turned the boycotted agenda item-7 into a tactic of further oppression!

The international community is genuinely horrified at how Israel has these tigers of human rights by the tail. In such a pervasive mood of moral exhaustion and impotence, human rights defenders are no longer certain whether or not the USA and EU Member States are able to guide Israel towards respect of human rights. Instead, in Israel's tug of "*might makes right*", Israel seems to be influencing the USA and EU Member States towards justifying its human rights violations and racial discrimination against the occupied Palestinian people. Their failure to support action by the HRC to make Israel accountable for its violations of the human rights of the Palestinians means non-participation in enforcing the rule of law to stop more and more denials and violations.

Israel's exercise of power politics was also evident in the elections campaign of Benjamin Netanyahu in which he promised not to allow a Palestinian State in the Occupied Palestinian Territories (OPT). Yet the Israeli Prime Minister's speech to U.S. Congress in March 2015 was met with 28 standing ovations in 47 minutes. Israel's manipulation of some of its closest allies raises serious concerns of whether they are capable of leading Israel to peaceful co-existence with its neighbors, or whether it is Israel that is leading the U.S., for instance, towards more chaos in its so-called creation of the Greater Middle East! How can any U.S. administration be trusted as a neutral broker of peace talks between the Occupying Power and the occupied Palestinian people when Israel seems to exercise more influence over U.S. foreign affairs and international relations than U.S. has over Israel!

There is no doubt that the apartheid in Israel is one of the worst because it is inherent in the very Zionist philosophy of the State and its apartheid system application of racist laws and practices, in the absence of written legislation. The intentional abuse of the rule of law severely undermines the appearance of democracy. The system is supported by a whole State structure to keep the decades-long occupation, oppression, and ethnic cleansing of Palestinians. Roadmap to roadmap, separation wall to separation wall, have been negotiated in good faith by the international community, without realizing that the first step taken might had been in the wrong direction, because the bias of the USA to Israel has made Palestinians' quest for self-determination lose its way from the very start. The hopeless circularity has made it possible for Israel to violate Palestinian rights with impunity with the ultimate declared aim of driving them out of their homeland.

Part of the problem from the beginning has been not only with the tragically biased U.S. peace process by threats of punishment to the Palestinians if they do not yield, but also with the questionable role the United Nations (UN) has played throughout. Yet many people working at the UN seem to have heard so much about the OPT that they almost suggest that they have heard enough. The HRC has heard clever speeches that its agenda item-7 is "over-saturated" with criticisms of the violations of the Occupier Israel, proposing to remove this item altogether from the agenda, a step that amounts to complete surrender to these violations.

What exactly is it that Palestinians must address and discuss at the HRC if not the human rights violated under Israeli occupation? When no conclusive arguments are brought to bear upon Palestinians right to resist an occupation, even children throwing stones at Israeli soldiers are branded as terrorists nowadays. The mountains of UN and NGOs reports on the grave human rights record of Israel cannot be swept away because of some states decision not to participate in the discussion. In spite of noble words, what does this one-sided justice tell us about the boycotters of agenda item-7 of the HRC! Those states should seriously reconsider the long-term impact of such misalliance, especially the effect of the use of double standards in the compliance with human rights as well as the respect for the rule of law and principles of humanitarian international law.

The brutal force and violence with which the inhuman system in the OPT is kept going is a test case of the responsibility of states to abide by the rule of law in settling international conflicts, and in particular, to act in compliance with the resolutions they voted for in UN General Assembly. To the dismay of human rights observers, there is a kind of right or privilege, a sense of entitlement, to resolve Israel's international conflicts by the flexing of muscles. The ruthless trading of votes on resolutions and diplomatic insincerity, push aside most of the wrongs perpetrated by the Occupying Power against the occupied people, under its own heel.

Behind the enduring of Palestinians there is the unrelenting hope for and trust in the international community's support of their right to self-determination and the other rights repeatedly confirmed by UN General Assembly. That unyielding strength in the justice of a cause is what makes a Palestinian survive yet another day, another year, another decade, under worsening conditions of degradation and dehumanization. Washing one's hands of the crimes committed by an empowered Occupier against an occupied People means to side with the powerful, not to be neutral.

History repeats itself and a common pitfall is that *"for the powerful, crimes are those that others commit."* By blaming the victim, some states are closing their eyes to the vast damage produced by their hypocrisy in the international community as a whole. They are allowing the Occupier to be the judge and jury for Palestinians not only in the OPT, but also at the UN. The more battles Palestinians lose in their struggle for their rights, the greater the loss for the International community in guaranteeing the rule of law for succeeding generations of humanity at large.

Recognizing Israel's influence to stop others from speaking up at the UN for those who have no influence does not diminish Palestinians willpower to withstand the abandonment of a handful of compromisers of principles, pretending to speak on behalf of an advanced and civilized world. Nevertheless, the ramifications of double standards are grievous and wide-ranging. So far, the marginalization of item-7 has encouraged Israel to continue its illegal siege of Gaza, expansion of settlements, failure to protect Palestinians and their properties from State-supported settler violence, institutionalized racial discrimination, segregation, population transfer, and deliberate refusal to cooperate with UN mandate-holders, which is a further violation of the legal obligations of Member States in the UN. By not holding Israel accountable, the effectiveness and moral authority of the HRC is being undermined, as well as, the credibility of the UN in maintaining peace and security.

What are the Palestinians to do in this world disorder, the lawlessness of leadership, the fraud and lies, the non-transparency and legal vacuum??? When stone-throwing Palestinian children are jailed, abused, traumatized, tortured, forced to stay in isolation in their cells, day and night, deprived of their inalienable rights to live as children live everywhere in this world, when the universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, become empty words! When all human rights principles are forsaken... Only the hollow echo of the boldness of the illegitimate reasoning of the pirates of human rights remains, preaching to the international community about the dangers of extending to an occupied people, cramped in bombarded concentration camps, the rights and privileges, which they claim for themselves.

Cruelty was the familiar air the persecuted Jews breathed during the Nazi period. Why should cruelty and disdain for others be the air that Israel makes Palestinians breath under its occupation! If only the injured injures, then those who were responsible for the persecution of Jews in Europe are legally and morally responsible for the Israeli persecution of Palestinians too. Their silence now, as their silence then, is the ultimate betrayal not only of the legacy of the Holocaust and Palestinians alike, but also a betrayal of the UN Charter promises and aspiration "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."

EAFFORD/May 2015